

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

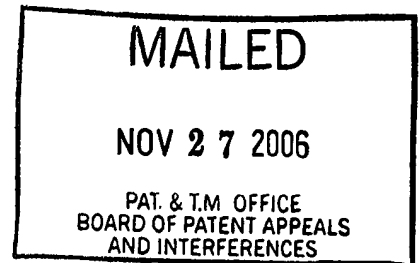
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES WARREN RUDOLPH

Appeal No. 2006-2409
Application No. 10/776,395

HEARD: October 18, 2006



Before HAIRSTON, BARRY, and BLANKENSHIP, Administrative Patent Judges.

BLANKENSHIP, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 15-18, which are all the claims remaining in the application.

We affirm.

BACKGROUND

The invention relates to a method for weighing parts being subjected to a CVI/CVD (chemical vapor infiltration/chemical vapor deposition) process. The method further includes monitoring and control of process parameters to achieve a desired weight gain. Claim 15 is reproduced below.

15. A method to determine the change and [sic] weight of parts in a furnace during a CVI/CVD process comprising the steps of measuring the change in weight of the entire furnace, including contents, during the CVI/CVD process, monitoring the rate of weight change, monitoring the furnace temperature, and changing the furnace temperature to achieve the desired weight gain.¹

The examiner relies on the following references:

Swartzendruber	4,044,920	Aug. 30, 1977
Spoor	4,217,785	Aug. 19, 1980
Yano et al. (Yano)	4,375,838	Mar. 08, 1983
Yoshida et al. (Yoshida)	4,964,734	Oct. 23, 1990
Golecki et al. (Golecki)	5,348,774	Sep. 20, 1994
Piroozmandi	5,770,823	Jun. 23, 1998

Claims 15-18 stand rejected under 35 U.S.C. § 103 as being unpatentable over Golecki, Yoshida, Yano, Spoor, Piroozmandi, and Swartzendruber.

We refer to the Final Rejection (mailed Sep. 10, 2004) and the Examiner's Answer (mailed Mar. 6, 2006) for a statement of the examiner's position and to the Brief

¹ An amendment (filed November 10, 2004) to claim 15 after the final rejection was entered by the examiner.

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(filed Nov. 16, 2005) and the Reply Brief (filed May 8, 2006) for appellant's position with respect to the claims which stand rejected.

OPINION

An appeal (2003-1362) in a parent application (09/178,399) was earlier before a panel of this board. We reviewed a rejection of the claims under 35 U.S.C. § 103 over the same combination of references that are applied against the instant claims. Claim 1 of the parent application at the time of appeal read as follows:

1. A method to determine the change in weight of parts in a furnace during a CVI/CVD process, comprising the step of: measuring the change in weight of the entire furnace, including contents, during the CVI/CVD process.

In a decision entered December 23, 2003, we affirmed the rejection of claim 1 in the parent application, and of all the claims falling with claim 1. We were not persuaded by any of the arguments presented by appellant asserting patentability of the claimed subject matter over the applied prior art.

Instant claims 15 through 18 set forth methods that include, in addition to "measuring the change in weight of the entire furnace, including contents, during the CVI/CVD process," monitoring process parameters and varying a parameter to achieve the desired weight gain, as described at page 6 of the parent application. For example, instant claim 15 adds "monitoring the rate of weight change, monitoring the furnace temperature, and changing the furnace temperature to achieve the desired weight gain"

to the language of former claim 1. The examiner contends, however, that all the claimed features relating to process parameter monitoring and control are described by Golecki.

Appellant seems, in the briefs, to repeat the arguments that we found to be unpersuasive in the earlier appeal. That is, appellant submits reasons as to why the references should be considered as improperly combined. Appellant notes the earlier appeal in the Brief (at 5). What is not clear, however, is why appellant seems to hold to the earlier position while ignoring the findings and conclusion of the Board with respect to the proposed combination of the references.

For example, appellant at page 14 and 15 of the Brief alleges that the “secondary” references cannot be combined with Golecki because the references are not in appellant’s field of endeavor. In our earlier decision, however, we found (at 4-5) that even if the references were not in appellant’s field of endeavor, the references were analogous art because all related to weighing accuracy, and were thus pertinent to the particular problem being solved. Appellant suggests (Brief at 14-15; Reply Brief at 7-8) that appellant’s field of endeavor relates to weighing a furnace, or in particular weighing a CVI furnace. By neglecting to address the reasons that we found the arguments relating to non-analogous art to be not persuasive in the earlier appeal, appellant does not now persuade us of error in our earlier decision, nor of error in the combination of the references that have been applied. Further, even if the problem facing appellant was “determining the weight change in the parts during processing of

the parts in a CVD furnace is important in order to adjust the process parameters to arrive at the desired density of the parts,” (Brief at 15), or “weight gain during a reactive process or its solution,” (Reply Brief at 10), we do not see why references relating to weighing accuracy should be considered not pertinent to determination of weight change.

With respect to the admitted differences between the instant claims and previously considered claim 1, appellant repeats limitations and alleges that the rejection fails to address those limitations. (Brief at 12-13; Reply Brief at 9 and 10-11.) However, the examiner finds that the limitations are taught by Golecki at columns 6, 7, and 8. (Final Rejection at 2; Answer at 5.) What a reference teaches is a question of fact. In re Baird, 16 F.3d 380, 382, 29 USPQ2d 1550, 1552 (Fed. Cir. 1994); In re Beattie, 974 F.2d 1309, 1311, 24 USPQ2d 1040, 1041 (Fed. Cir. 1992). Appellant’s repetition of limitations and (erroneous) allegations that the limitations have not been addressed do not persuade us of error in the examiner’s findings. In particular, appellant neglects to address the particular text in Golecki upon which the examiner bases the findings, thus failing to provide any foundation for the belief that Golecki fails to teach that which the rejection purports.

We therefore refer to the examiner’s position as set out in the Answer and conclude that appellant fails to show error in the rejection of any of claims 15 through 18. We sustain the § 103 rejection of the claims.

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CONCLUSION

The rejection of claims 15-18 under 35 U.S.C. § 103 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a). See 37 CFR § 1.136(a)(1)(iv).

AFFIRMED

KENNETH W. HAIRSTON
Administrative Patent Judge

~~LANCE LEONARD BARRY~~
~~Administrative Patent Judge~~

HOWARD B. BLANKENSHIP
Administrative Patent Judge

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BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, IL 60610